18

9

HIGH COURT OF DELHI : NEW DELHI

\+ **ITA No.11 of 2003 & ITA 16/2003**

Judgement reserved on: March 1, 2005

% Judgement delivered on: May 5, 2005

\# Commissioner of Income Tax, Delhi-X
Drum Shape Building
I.P. Estate, New Delhi ...Appellant

! Through Mr. R.D. Jolly with Mr. Ajay Jha, Advocates

Versus

$ M/s Kesr Kimam Karyalaya
3168, Mohalla Dassan
Hauz Quazi, Delhi-110006 ...Respondent

^ Through Mr. Anoop Sharma, Advocate

ITA 16/2003

\# Commissioner of Income Tax, Delhi-X
Drum Shape Building
I.P. Estate, New Delhi ...Appellant

! Through Mr. R.D. Jolly with Mr. Ajay Jha, Advocates

Versus

Signature Not Verified
Digitally Signed By:AMULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

$ M/s K.K. Marketing
3168, Mohalla Dassan
Hauz Quazi, Delhi-110006 ...Respondent

^ Through Mr. Anoop Sharma, Advocate

Coram:

* **HON'BLE MR. JUSTICE SWATANTER KUMAR**
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether the Reporters of local papers may be allowed to see the judgement? Yes

2. To be referred to Reporter or not? Not necessary

3. Whether the judgement should be reported in the Digest? Not necessary

* **MADAN B. LOKUR, J.**

The Revenue is aggrieved by an order dated 6th February, 2002 passed by the Income Tax Appellate Tribunal, Delhi Bench C (the Tribunal) in ITA No. 823(Del)/96.

2. A common order was passed in respect of two assessees,

namely, M/s K.K. Marketing and M/s Kesr Kimam Karyalaya. In respect of M/s K.K. Marketing, the Revenue has filed ITA No.16/2003 while in the case of M/s Kesr Kimam Karyalaya, the Revenue has filed ITA No.11/2003.

3. The assessment year in both the appeals is the same, that is, 1994-95. In respect of this assessment year, the assessees were required to pay the first installment of advance tax on 15th September, 1993 while the next two installments were due on 15th December, 1993 and 15th March, 1994.

4. A search was carried out in the premises of the assessees in August, 1993. During the search, a large amount of cash was recovered and so, when payment of advance tax was becoming due in September, 1993 the assessees wrote to the department that the cash seized may be adjusted towards advance tax. This request was

reiterated in December, 1993 also.

5. On 16th December, 1993, an order was passed under Section 132(5) of the Income Tax Act, 1961 (the Act) and assessments in the case of the assessees were completed on 28th November, 1994. While passing assessment orders under Section 143(1)(a) of the Act, it was held that the assessees were entitled to a refund of Rs.48,78,295/- as against the advance tax liability of Rs.48,55,000/-. The assessing officer charged interest from both the assessees under Sections 234-B and 234-C of the Act.

6. Feeling aggrieved, both the assessees moved applications under Section 154 of the Act praying that interest was wrongly charged because requests had earlier been made to adjust the amount seized in cash against the impending advance tax liability. The assessing officer turned down the application under Section

154 of the Act.

7. In appeal, the Commissioner of Income Tax (Appeals) [CIT (A)] held that in the case of M/s Kesr Kimam Karyalaya, interest under Sections 234-B and 234-C could be charged upto the date of the order under Section 132(5) of the Act, that is, 16th December, 1993 while in the case of M/s K.K. Marketing, the CIT (A) held that the request for adjustment of cash was made by the partners of the assessee and not by the assessee itself and so the adjustment could not be made.

8. Both the assessees challenged these orders in appeal before the Tribunal, which accepted their contentions by the impugned order.

9. The Tribunal noted that the assessees had made a request for

adjustment of the seized cash before the date on which advance tax became due. It was also noted that ultimately the liability of the assessees towards advance tax was less than the amount found refundable to them. It was also noted that since the question of charging interest under Sections 234-B and 234-C of the Act was highly debatable, it would be appropriate not to charge interest from the assessees.

10. Before us, learned counsel for the Revenue contended that substantial questions of law arise for consideration inasmuch as both the assessees were liable to pay interest under the provisions of Sections 234-B and 234-C of the Act. It was also contended that cash belonging to the partners of the assessees could not be adjusted against the liability of the assessees.

11. We are of the view that the present appeals do not raise any

question of law, much less any substantial question of law. There is no dispute that the offer for adjustment of the seized cash was made by the assessees before the advance tax liability became due. Therefore, it is not as if the assessees had any intention of shirking their advance tax liabilities. In similar circumstances, the Tribunal had taken the view that adjustment of the cash recovered could be made against advance tax liability and the Revenue in the grounds of appeal has not disputed this. The orders passed by the Tribunal in this regard, which have been referred to in paragraph 9 of the impugned order, appear to have been accepted by the Revenue.

12. In so far as the adjustment of the cash seized against the liability of the firm is concerned, the Tribunal rightly held that there is no difference between a firm and its partners. Its partners constitute a firm and they are liable to make good any demand of taxes on behalf of the firm. The partners of the concerned assessee

had categorically prayed that the cash seized from their premises, which also happened to be the premises of the firm, should be adjusted against the advance tax liability of the firm/assessee. Such a request could have been made by the partners to bind the assessee and there could not have been any ground for rejecting such a request.

13. It must also be noted that the Revenue accepted the return filed by the assessees and in fact it was found that they were entitled to a refund, which was more than the amount of cash that was seized.

14. On the basis of the above facts, we do not find any error of law having been committed by the Tribunal in accepting the contentions urged by the assessees. While it is true that tax laws and equity do not always go hand in hand, but in the present cases,

since there is nothing to prohibit the assessees from making a request for adjustment of the cash seized against advance tax liabilities, equity demands that the cash amount ought to have been adjusted as prayed for by the assessees to save it from any liability of interest.

15. We are of the view that no substantial question of law arises. Both the appeals are dismissed.

(Madan B. Lokur)
Judge

(Swatanter Kumar)
Judge

May 5, 2005
ncg

Certified that the corrected copy of the judgment has been transmitted in the main Server.

PS
5/5/05